

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4800 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHOTABHAI KALIDAS PATEL

Versus

RAMANBHAI KALIDAS PATEL

Appearance:

MR AJ PATEL for Petitioner
None present for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/96

C.A.V. JUDGEMENT

1. The petitioner dissatisfied with the order of the Gujarat Revenue Tribunal dated 13th July, 1983 made in Revision Application No.TEN.B.A.515 of 1982, filed this Special Civil Application before this Court. The order of the Tribunal came to be passed under the following circumstances:

The respondent no.2 since deceased, had made an

application under sec. 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948) on 24th December, 1976 to the Mamlatdar and ALT Petlad and prayed therein that he may be declared to be a deemed purchaser of the land bearing Survey No.1051/2 admeasuring 22 gunthas of the village Demol in Petlad Taluka of District Kaira. This application of the respondent no.2 was registered as Tenancy case No.Demol/32G/241 of 1977. The Mamlatdar and ALT under its order dated 19-5-1978 dismissed the said application of the respondent no.2. The respondent no.2 challenged the order of the Mamlatdar and ALT by filing a Tenancy Appeal No.636 of 1978 before the Deputy Collector, Petlad. The appeal filed by the respondent no.2 was also dismissed by the appellate authority under its order dated 13-8-1979. Being aggrieved of the order aforesaid, the respondent no.2 has taken the matter further to the Gujarat Revenue Tribunal by filing Revision Application No.TEN.B.A.1156 of 1979. The Tribunal under its order dated 18-1-1982 accepted the appeal. The respondent no.2 was allowed to be the tenant and the deemed purchaser of the land in dispute and the matter was remanded to the Mamlatdar to hold the further inquiry under sec. 32G of the Act, 1948.. The Tribunal has said that as the applicant is the legal tenant of the disputed land as on 1-4-1957, the learned Mamlatdar in holding further inquiry shall fix the purchase price of the said land and shall pass the consequential orders.

2. The respondent no.2 on 24th October, 1980 filed an application before the Tribunal praying therein for making panchnama of the disputed land i.e. regarding the exact position of the land as well as on the point as to whether the land has been used for cultivation purpose or not. In the revision application, the petitioner raised an objection that it was barred by limitation. The Tribunal on 2-3-1981 on the question of the Revision application barred by limitation, heard the arguments of the counsel for the parties. It appears that both the parties filed the affidavits. On 2-3-1981, the Tribunal made the order that prima-facie it clearly appears that this revision application is not barred by limitation and the reasons thereof shall be given in detail in the final judgment. After passing this order, the application filed by the respondent no.2 for the preparation of panchnama has been considered and the Tribunal has allowed the prayer of the respondent no.2 and the Mamlatdar, Petlad was directed to make the panchnama of the local places and shall make a detailed panchnama about the disputed land as well as on the point as to whether the land has been used for cultivation purpose.

It has further been directed that after making the detailed panchnama in the presence of the parties or their advocates, the Mamlatdar shall forward the said panchnama to this Tribunal. On the request of the counsel for respondent no.2, pending receipt of the panchnama, the hearing of the main revision application on merits was adjourned. A copy of the panchnama which has been prepared by the Mamlatdar dated 25-3-1981 has been filed by the petitioner on the record of this Special Civil Application.

3. Nobody has put appearance on behalf of the respondents, nor any reply has been filed on their behalf to this Special Civil Application.

4. The learned counsel for the petitioner Shri A.J. Patel contended that the revision application filed by the respondent no.2 before the Tribunal was barred by limitation. A specific objection has been raised on this count by the petitioner before the Tribunal. The affidavits were also filed by both the parties and the arguments were also heard on this question by the Tribunal, but Shri Patel contended that no reasons have been given by the Tribunal to hold the revision application to be in time. Shri Patel further, drawing the attention of this court to the order of the Tribunal made on 2-3-1981 contended that though prima-facie the Tribunal has expressed its opinion that the revision application is not barred by time, but the reasons for the same were to be given in the final order and judgment of the revision application, but while giving the final judgment of the revision application, the Tribunal has not given any reasons to hold the revision application to be in time and it is an error apparent on the face of the order. It has next been contended by the learned counsel for the petition that on the request of the respondent no.2, the Tribunal has ordered the concerned Mamlatdar to make a detailed panchnama about the disputed land as well as on the point as to whether the land has been used for cultivation purpose or not. The respondent no.2, Shri Patel contended that himself wanted to have this panchnama prepared. This panchnama has been prepared by the Mamlatdar and sent to the Tribunal as ordered by it, but while giving the decision on merits finally, the Tribunal has not considered this Panchnama which is another serious error apparent on the face of the order. Shri Patel contended that when the Tribunal has desired the panchnama of the disputed land and particularly with reference to the point whether the land was in cultivation or not, while deciding the matter it should have been taken into consideration. On merits, the

learned counsel for the petitioner contended that the Tribunal has committed serious error of law which is apparent on the face of the order in declaring the respondent no.2 to be the deemed purchaser of the land in dispute. Shri Patel contended that sec.32 of the Act, 1948 is very clear and only where the tenant was in physical possession on tellers date i.e. 1-4-1957, he should have been considered to be a deemed purchaser and the Tribunal could have made the order to proceed in the matter under sec.32G of the Act, 1948 and not otherwise. In the present case, it is not in dispute that on 1-4-1957, the respondent no.2 was not in possession of the land in dispute. Shri Patel by making reference to the finding of the Tribunal contended that in the cultivation column in V.F.7-12 from the year 1954-55 the owners of the land were shown as cultivating the same. He further contended that the respondent no.2 has been dispossessed as on Tribunal's own finding much before 1957 and earlier to 1954-55. In view of this finding, the protection which has been given to the respondent no.2 was not justified. The provision of sec.32 are not attracted in the present case and no right whatsoever could have been conferred to the respondent no.2. Lastly, he contended that in the case of the class of the persons to which the respondent no.2 belongs, a provision has been made in Sub-section 1A of sec.32 and no such action has been taken by the respondent no.2 under the said provision. Shri Patel urged that the reading of Subsection 1A of sec. 32 of the Act, 1948 clinches the issue and only the tenant who was in physical possession of the land on 1-4-1957 could have been considered to be deemed purchaser and not otherwise.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. I do not consider it to be necessary in the present case to advert to all the contentions except the contention that the revision application was barred by limitation and second that the panchnama prepared by the Mamatdar has not been considered on which according to me this matter deserves to be disposed of and the matter is to be remanded back to the Tribunal to decide the matter afresh according to the law and direction given hereinafter in this judgment.

6. The petitioner has raised a specific objection before the Tribunal that the revision application filed by the respondent no.2 was barred by limitation. It is not a case that the Tribunal was not aware or noticed this objection of the petitioner. Both the parties have filed their affidavits in support of their case on the

question of limitation. The Tribunal has heard the counsel for the parties on this question as it is clearly borne out from the order dated 2-3-1981. In the order dated 2-3-1981, the Tribunal has observed that prima-facie it appears that this revision application is not barred by limitation, but at the same time, the Tribunal had reserved the reasons to be recorded in support of its opinion in the final judgment. In the final judgment which has been given by the Tribunal, I do not find any reasons given by the Tribunal in support of its earlier opinion that the revision application is not barred by limitation. Once the Tribunal has ordered that it will record its reasons in the final order to hold the revision application in time, it was obligatory upon it to give the reasons in support thereof. In the present case, the Tribunal has by not giving out the reasons in support of its decision that the revision application is not barred by limitation, committed a serious procedural irregularity as well as it is a case where it has committed an error in exercise of its jurisdiction. Moreover, when the Tribunal has made it clear that it shall record its reasons in support of its decision that the application is not barred by limitation, I fail to see any justification not to give those reasons. This is error of law apparent on the face of the order of the Tribunal, as such, deserves to be corrected.

7. Not only this there is yet another serious error of law apparent on the face of order of the Tribunal. Under the order dated 2-3-1981, on the request of the counsel for the respondent no.2, the Tribunal has passed an order for making of the panchnama of the disputed land. The Tribunal has directed the Mamlatdar to prepare this panchnama. The hearing of the application has been deferred till the panchnama is prepared and sent to the Tribunal meaning thereby the Tribunal opined that the panchnama is necessary to be considered while deciding the revision application finally. The Tribunal has sought the panchnama particularly with reference to the point whether the land in dispute was under cultivation or not. It is not in dispute that the panchnama which has been prepared by the Mamlatdar has been received by the Tribunal earlier to deciding the revision application on merits. When the panchnama has been received and Tribunal has also opined that it is to be considered while making the final decision then it is to be considered and what value has to be given to it that is different matter, but non consideration of this document is clearly an irregularity which goes to the root of the matter leaving apart that it is an error of law apparent on the face of the order. This error again deserves to

be rectified.

8. In the result, this Special Civil Application succeeds in part. The order of the Gujarat Revenue Tribunal at Ahmedabad in Revision Application NO.TEN.B.A.515/82 dated 13-7-1983 is set aside and the matter is sent back to the Tribunal to decide the matter afresh on merits. Whatever decision given earlier on merits of the case may also be considered afresh and further the Tribunal has to consider the question raised by the petitioner that the revision is barred by limitation and to consider also the panchnama which has been prepared by Mamlatdar on its own direction. It is an old matter and it is expected that the Tribunal shall decide this matter within a reasonable time after receipt of certified copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.